Reg. No. GR/RNP/GOA/32

RNI No. GOAENG/2002/6410

Panaji, 9th September, 2004 (Bhadra 18, 1926)

SERIES II No. 24

OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

Department of Labour

Notification

No. 28/1/2003-LAB-Part/4427

The following Award passed by the Industrial Tribunal, of Goa, at Panaji-Goa on 5-12-2003 in reference No. IT/6/98 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 22nd December, 2003.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/6/98

Workmen rep. by
The President,
Goa Trade and Commercial
Workers Union, Velho Bldg.,
Panaji-Goa. ... Workmen/Party -I

v/s.

M/s. Atlantic Spinning and
Weaving Mills Ltd.,
Xeldem, Quepem-Goa. ... Employer/Party II

Workmen/Party I -Represented by Adv. Shri Suhas Naik.

Employer/Party II- Represented by Adv. Shri G. K. Sardessai.

Panaji, dated : 5-12-2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 11-12-1997 bearing No.IRM/CON/ /(67)/97/6422 referred the following dispute for adjudication of this Tribunal.

1. Whether the demands of the Goa Trade and Commercial Workers Union for full wages to those workmen represented by said union, employed in M/s. Atlantic Spinning and Weaving Mills Limited, Xeldem, Quepem-Goa, and were to be provided employment by 31-7-97 as per the understanding reached, from 1-8-97 till the date each one of them is provided employment, is legal and justified?

2. Whether the demands of the Goa Trade and Commercial Workers union for recognition to their union as majority union by the management of M/s. Atlantic Spinning and Weaving Mills Limited, Xeldem, Quepem, Goa, is legal and justified?

3. If not, to what relief the workmen are entitled?

2. On receipt of the reference a case was registered under No. IT/6/98 and registered A. D. notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workmen/Party-I (for short "union") filed statement of claim at Exb.-4. The facts of the case in brief as pleaded by the Union are that the Employer/Party-II (for short "employer") is engaged in the manufacturing process of spinning and weaving mills and is having a factory at Xeldem, Quepem-Goa. That the workers of the employer unionised themselves under the banner of Goa Trade and Commercial Workers Union and this fact was informed to the employer by the union vide letter dated 28-11-95. That soon after the workers had unionised the employer resorted to various illegal activities in order to victimise and harass the

workers for their legitimate trade union activities and the factory was locked illegally w.e.f. 18-4-1996. That the Union raised written objections vide letter dated 5-6-97 and inspite of the continuous correspondence made by the Union with the employer requesting to resolve the problems amicably in order to ensure harmonious industrial relations the employer did not pay any heed to the said efforts made by the union and continued with their adamant and rigid stand. That the workers held general body meeting on 25-11-95 and unanimously decided to enroll themselves under the banner of Goa Trade and Commercial Workers Union and a 21 member new managing committee was elected. That the Union persisted with the Registrar of Trade Unions for verification of the membership and on verification the Registrar certified that the Goa Trade and Commercial Workers Union is the majority union and asked the management vide letter dated 5-12-95 to recognise the said union as the majority union but the employer failed to do so. That the employer started recruiting new workers from the neighbouring state of India and in order to harass and terrorise the workers the employer suspended a active Committee member on 22-4-96. That the employer did not initiate any enquiry proceedings against the suspended workers nor paid to them the subsistence allowance. That the employer obtained an injunction order restraining the workers from entering the factory gate and this order was obtained from the Civil Court on mis-leading, false and fabricated ground. That the employer locked up the factory illegally from 18-4-96 though no extenuating circumstances existed for the employer to lock out the factory. That the union made several representations against the illegal activities adopted by the employer but the employer failed to resolve the matter amicably across the table. That the union stated that on 29-6-97 and on 12-7-97 over 460 workers appeared for physical verification which was carried out by the Labour Commissioner and they also accepted the salary for the month of April, 1996 paid to them on 10-7-97. That as per the understanding the 35 maintenance workers reported for work on 7-7-97 as agreed before the Chief Minister but the management did not allow them to report for work thereby violating the understanding. That the union vide letter dated 14-7-97 raised various objections and on account of failure on the part of the management to implement the understanding the workers were put to lot of hardship and in convenience. That the President of the Union in protest went on indefinite hunger strike from 14-8-97 onwards and which the intervention of the Government an agreement was signed between the Union and the management on 20-8-97 as per which agreement the employer was to provide employment to all the workers with immediate effect but no employment was provided by the employer. The Union therefore stated that all the workers are entitled to full wages from 1-8-97 till the date each of the worker is provided employment by the employer. The union stated that Goa Trade and Commercial Workers Union is the majority union and they are entitled to be recognised as the majority union by the management of the employer.

3. The employer filed written statement at Exb. 5. By way of preliminary objection the employer stated that the reference made by the Government is bad in law for the reasons stated in para(i) to (ix) of the written statement and the same is liable to be rejected. Without prejudice to the above contention, the employer stated that on 19-4-98 Mr. Christopher Fonseca came at the Mill and started giving big speeches calling the workmen to attend the meeting and he called upon the workmen to agitate and call for a strike giving false promises to the workmen. The employer stated that the innocent workmen were totally misguided by the speech of Mr. Fonseca and some of the workmen after hearing the speech not only resorted to strike but also assaulted and mahandled the Vice-President of the Mill Mr. V. K. Jain. The employer stated that they were constrained to suspend certain workmen pending enquiry as they had indulged in the serious acts of misconduct. The employer stated that the suspended workmen did not attend the enquiry and although they were called for work at the intervention of the Labour Minister they did not report for work. The employer denied that majority of the workers have joined the union and stated that there is already one union having majority character known as National Textile Employees Union and the employer has signed various settlements with the said union improving the service conditions of the workers. The employer denied that any industrial dispute is existing between the union and the employer. The employer stated that the workers who were on illegal and unjustified strike from 20-4-96 continued with the said strike and that infect the said strike is still continuing. The employer stated that the workers resorted to strike and inspite of settlement signed with the workers committee at the instance of the Chief Minister, Labour Minister and the Labour Commissioner the union continued its agitation outside the mill beating, threatening, abusing, throwing stones, stopping free movement of man and material, creating violence and terror and even went to the extent of beating the Police and threatening the loyal workers. The employer stated that the union leadership from the date of the strike inspite of various assurances given to them by the Chief Minister, Labour Minister and the Labour Commissioner continued their violent activities at and around the mill. The employer admitted that a settlement was signed on 20-8-97 with the representative of the workers under pressure. The employer stated that they had fully complied with all the clauses of the said settlement but the union systematically and deliberately avoided to implement the settlement and several representations were made by the employer before the appropriate authorities in this regard. The employer denied that injunction order was obtained from the Civil Court by misleading the said court or by giving false and fabricated ground. The employer denied that any lock--out was declared from 18-4-96 or at any other time. The employer denied that the management violated any understanding reached before the Chief Minister or that as per the understanding reached 35 maintainance workers reported for work on 7-7-97 or that the

management did not allow them to report for work. The employer stated that they are not aware and do not admit that on 29-6-97 and 12-7-97 physical verification was carried out by the Labour Commissioner of 460 workers. The employer denied that the workers are entitled to full wages till the date they resume for work. The employer denied that Goa Trade and Commercial Workers Union is a majority union or that it represents the majority of the workers employed by the employer in the factory. The employer stated that the Union is not entitled to any relief as claimed. The Union thereafter filed rejoinder at Exb.-6.

On the pleadings of the parties the following issues were framed:

1. Whether the Party I/Union proves that it represents majority of the workers of the Party II and hence its demand for being recognised as the majority union by the management of the Party II is legal and justified ?

2. Whether the Party I/Union proves that the workers represented by them are entitled for full wages from 1-8-97 till the date each one of them is provided employment by the Party II ?

3. Whether the Party II proves that the reference is bad in law and not maintainable for the reasons stated in para (i) to (ix) of the written statement ?

4. Whether the Party I/Union is entitled to any relief?

5. What Award?

4. My findings on the issues are as follows:–

Issue No. 1: In the negative.
Issue No. 2: In the negative.
Issue No. 3: In the negative.
Issue No. 4: In the negative.
Issue No. 5: As per order below.

REASONS

5. *Issue No. 1 and 2*: After the issues were framed several opportunities were given to the Union to lead evidence in the matter in support of its case. However inspite of the opportunities given no evidence came to be led on behalf of the union. On 1-10-03 Adv. Shri S. Naik, the learned Advocate for the Union filed an application dated 1-10-03 at Exb.-17. In the said application it was stated that the union representatives are unable to proceed with the evidence of the union as the workmen are not in touch with the union nor the workmen have contacted the union and as such the union is not able to proceed with the matter inspite of its best efforts to contact the workmen. The union therefore prayed that appropriate orders be passed in the matter. Since several opportunities were given to the union to lead evidence order was passed on the said application closing the evidence of the union.

6. The reference of the dispute was made by the Government at the instance of the union. It is the union who had raised the industrial dispute. The Bombay High Court, Panaji Bench in the case of V. N. S. Engineering Services V/s. Industrial Tribunal, Goa, Daman and Diu reported in FJR Vol.71 at page 393 has held that the obligation to lead evidence to establish an allegation made by a party is on the party making an allegation the test being that he who does not lead evidence must fail. The Bombay High Court has further held that the provision of Rule 10-B of the Industrial Disputes (Central) rules which requires the party raising a dispute to file a statement of demands relating to the issues in the order of reference for adjudication within 15 days from the receipt of the order of reference and forward copies to the opposite party involved, clearly indicates that the party who raises the industrial dispute is bound to prove contention raised by him and the Industrial Tribunal or Labour Court would be erring in placing the burden of proof on the other party to the dispute. In another case i.e. in the case of V. K. Raj Industries v/s. Labour Court (I) reported in 1981 (29) FLR 194, the Allahabad High Court has held that the proceedings before the Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court, but the principles underlying the said Act are applicable. The High Court has further held that it is well settled that if a party challenges the validity of an order the burden lies on him to prove the illegality of the order and if no evidence is produced the party invoking the jurisdiction must fail. The High Court has further held that if the workmen fails to appear or to file written statement or produce evidence the dispute referred by the Government cannot be answered in favour of the workman and he will not be entitled to any relief.

7. In the present case the dispute was raised by the union on behalf of the workmen that the workmen are entitled by to full wages from 1-8-97 till the date each one of them is provided employment. The union had also claimed that it represents the majority of the workers of the employer and therefore the said union is entitled to be recognised as the majority union by the management of the employer. The employer in the written statement had denied the above claims of the Union. Therefore the burden was on the union to prove that the workmen are entitled to full wages from 1-8-97 till each one of them is provided with the employment and that the union is entitled to be recognised as the majority union by the employer. As mentioned earlier the union was given several opportunities to lead evidence in the matter. However inspite of the opportunities given no evidence whatsoever was led by the union and in the circumstances the evidence of the union was closed. This being the case there is no evidence before me to hold that the demand of the union for full wages to the workmen from 1-8-97 till the date each one of them is provided employment by the employer is legal and justified. There is also no evidence before me to hold that the demand of the union for being recognised as the majority union by the management of the employer is legal and justified. In the circumstances I answer the issue no. 1 and 2 in the negative.

8. *Issue No. 3*:– After the evidence of the Union was closed the employer was given opportunity to lead evidence in the matter. Adv. Shri Sardessai representing the employer submitted that he is not leading any evidence on behalf of the employer. It is the employer who had taken the defence that the reference made by the Government is not maintainable, on the ground stated in para (i) to (ix) of the written statement. Since no evidence has been led by the employer in support of their contention that the reference is not maintainable I hold that the employer has failed to prove that the reference made by the Government is not maintainable. I therefore answer the issue no. 3 in the negative.

9. *Issue no. 4*:– Since it has been held by me that the Union has failed to prove that its demand for full wages to the workman from 1-8-97 till the date each one of them is provided with the employment is legal and justified and the union has also failed to prove that its demand for being recognised as the majority union by the management of the of the employer is legal and justified union/workmen are not entitled to any relief. I therefore answer the issue no. 4 in the negative.

In the circumstances I pass the following order.

ORDER

It is hereby held that the demand of the Goa Trade and Commercial Workers Union for full wages to the workmen represented by the said union employed in M/s. Atlantic Spinning and Weaving Mills Ltd., Xeldem, Quepem-Goa and were to be provided employment by 31-7-97 as per the understanding reached from 1-8-97 till the date each one of them is provided employment is not legal and justified. It is hereby further held that the demand of Goa Trade and Commercial Workers Union for recognition to their union as the majority union by the management of M/s. Atlantic Spinning and Weaving Mills Ltd., Xeldem, Quepem-Goa is not legal and justified. It is hereby also held that the workmen are not entitled to any relief.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2003/LAB-Part/4425

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 4-12-2003 in reference No. IT/11/92 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 22nd December, 2003.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/11/92

Shri Ranganath Chodankar, (Since deceased)
Through his legal heirs ... Workman/Party -I

1. Smt. Ranjana R. Chodankar
   r/o Mayem Bicholim, Goa.
2. Sushma A. Khutkar
3. Ankush V. Khutkar
   r/o Kalem, Sanguem Goa.
4. Shubhangi P. Amonkar,
5. Pradeep G. Amonkar
   r/o Surla, Palem-Goa.
6. Prakash R. Chodankar
7. Pramod R. Chodankar
8. Shilpa R. Chodankar
9. Jayshree R. Chodankar
   r/o Mayem, Bicholim-Goa.

v/s.

The Managing Director,
M/s. Dempo Mining Corporation Ltd.,
Dempo House,
Campal, Panaji-Goa. ... Employer/Party II

Workman/Party I -Represented by Adv. Shri Arun Naik.

Employer/Party II- Represented by Adv. Shri M. S. Bandodkar.

Panaji, dated : 4-12-2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section (2A) of section 10 of the Industrial Disputes Act, 1947, the Central Government by order dated 21-1-1992 bearing No. L29012/40/91--IR(Misc) referred the following dispute for adjudication by this Tribunal.

"Whether the action of management of M/s. Dempo Mining Corporation Ltd., Panaji is justified in terminating the services of Shri Ranganath Chodankar, Operator w.e.f. 17-12-1990?

If not, what relief the workman is entitled for?"

2. On receipt of the reference a case was registered under No. IT/11/92 and registered A. D. notice was issued to the parties. In pursuance to the said notice the parties put in their appearence. The Workman Shri Ranganath Chodankar (for short "deceased workman") filed statement of claim at Exb.- 5. The facts of the case in

brief as pleaded by the deceased workman are that he was employed by the Employer/Party II (for short "employer") as a helper at their Mines at Dobdobo, Bicholim Goa, and subsequently he was promoted as a Plantman-I w.e.f., 1st September, 1989. That on 5-10-90 he was served with a suspension order stating that due to serious allegations against him it was necessary to place him under suspension with immediate effect pending enquiry. That thereafter he was issued a charge sheet cum notice of enquiry dated 2-4-90 alleging certain acts of misconducts against him as per the Certified Standing Orders. That pursuant to the said charge sheet, a domestic enquiry was conducted against him and on completion of the enquiry the Inquiry Officer submitted his findings dated 24-10-90 holding him guilty of the charges of misconduct. Thereafter by letter dated 8-11-90 the Administrative Manager (Mines) of the employer informed him that the management concurred with the said findings and decided to dismiss him from services and that he was given one week's time to submit his explanation as to why the action of dismissal should not be taken against him. That by letter dated 5-12-90 he submitted his explanation but by letter dated 17-12-90 the Administrative Manager (Mines) terminated his services. That accordingly his services were terminated by way of dismissal by letter dated 17-12-90 with immediate effect. The deceased workman contended that the enquiry conducted against him is not fair and proper and the findings given by the Inquiry Officer are perverse. He also contended that the Administrative Manager (Mines) could not have terminated his services because he was not his appointing authority. He contended that termination of his services is illegal and unjustified and therefore he is entitled to reinstatement in service with full back wages.

3. *The employer filed written statement at Exb. 6.*– The employer admitted that in September 1989 the deceased workman was promoted as Plantman-I and stated that he was given complete charge of operation and maintaining an impactor crusher plant from 4-11-89. The employer stated that deceased workman was responsible for the safety of the persons working on the said plant including the Chute through which the lumpy ore would fall in the crusher. The employer stated than on 2-3-90 while working in the afternoon shift commencing from 13.30 hrs. the deceased workman acted in a careless and negligent manner as a result of which serious accident took place in the crusher resulting into the death of a workman and therefore the deceased workman was issued charge sheet for having committed various acts of serious misconduct and he was asked to show cause as to why disciplinary action should not be taken against him. The employer stated that the departmental enquiry was conducted against the deceased workman where in he fully participated and he was defended by an office bearer of an union. The employer stated that after the enquiry was completed the Inquiry Officer submitted his report holding that all the charges held against the deceased workman are proved. The employer stated that on receipt of the report the Managing Director who was the appointing authority of the deceased workman went through the proceedings of the enquiry and the findings of the Inquiry Officer and after having concurred with the same, directed Sr. Admn., Manager(mines) to terminate the services of the deceased workman in the interest of general safety at the mines and of the workmen working in the mines. The employer stated that since the explanation given by the deceased workman was found not satisfactory the employer terminated his services w.e.f. 17-12-90. The employer denied that the enquiry conducted against the deceased workman is not fair and proper and also denied that the findings given by the Inquiry Officer are perverse. The employer denied that termination of service of the deceased workman is illegal and not justified and stated that the deceased workman is not entitled to any relief as claimed by him. The deceased workman thereafter filed rejoinder at Exb. 7.

4. On the pleadings of the parties issues were framed at Exb. 8.– The issue no. 1 and 3 were treated as preliminary issues as the issue no. 1 was pertaining to the fairness of the enquiry conducted against the deceased workman and the issue no. 2 was pertaining to the perversity of the findings given by the Inquiry Officer. The deceased workman filed an application dated 7-10-94 stating that he was not pressing for the issue no. 1 which was on the fairness of the enquiry. The parties submitted that the issue no. 3 which was on the point of findings of the Inquiry Officer the same may be disposed of after hearing the parties on the said issue. Accordingly, the parties were heard on the said issue no. 3 and this Tribunal by findings dated 14-6-2001 held that the deceased workman is guilty of the charges levelled against him in the charge sheet dated 2nd April, 1990 which constitute misconduct as specified in the charge sheet.

5. After the issue no. 3 was disposed off as stated above the case was fixed for the evidence of the deceased workman on the other issues. However before the evidence was recorded the workman Shri Ranganath Chodankar died and an application dated 11-6-2003 was filed by his legal heirs for bringing them on record in place of the deceased workman as Party I to the present proceedings. Accordingly the legal heirs whose names are mentioned at Sr. No. 1-9 in the cause title were brought on record. Thereafter the parties submitted that they are trying to arrive at an amicable settlement and accordingly on 17-11-2003 the parties appeared and stated that the dispute between them is amicably settled and they filed the consent terms dated 17-11-2003 at Exb. 25. The legal heirs also filed an application along with the said consent terms that they have no objection for issuing the cheque in the name of Smt. Ranjana Chodankar, the window of the deceased workman. I have gone through the terms of the said settlement and I am satisfied that the said terms are certainly in the interest of the legal heirs of the deceased workman. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 17-11-2003 Exb. 25.

ORDER

1. It is agreed between the parties that the Manage--ment of M/s. Dempo Mining Corporation Ltd. (hereinafter referred to as "Company") shall pay a sum of Rs. 60,000/- (Rupees sixty thousand only) to Smt. Ranjana R. Chodankar, the wife of late Ranganath Chodankar by way of an accounts payee cheques in her name in full and final settlement of all the claims which shall include the wages, bonus, gratuity, leave encashment, overtime, notice pay, etc., if any arising out of the employment/termination of services of late Ranganath Chodankar, and any claims arising out of the reference mentioned hereinabove payable to the heirs of late Ranganath Chodankar.

2. It is agreed by Smt. Ranjana R. Chodankar including other heirs of the workman that they shall accept the said amount mentioned hereinabove clause no. 1, paid in the name of Ranjana Chodankar in full and final settlement of all their claims arising out of the employment of late Ranganath Chodankar with the company and shall acknowledge the said amount by way of receipt duly signed by her and further confirm that it satisfy all the claims including any claim of the heirs and nothing further benefits are due and payable to late Ranganath Chodankar by the company which can be computed in terms of money, and this settlement shall satisfy all their claims including the claim under reference.

3. It is further agreed by Smt. Ranjana Chodankar that in the event any legal heirs including the heirs as mentioned in the application dated 11-6-03 claims money or benefits due to late Ranganath Chodankar which has been paid to her by the company, she shall all the time remain liable for it and shall fully and effectively indemnify and keep indemnify M/s. Dempo Mining Corporation Ltd., against the money which has been paid to her, including any/all losses, damages or cost or charges or expenses which the company had to incur or suffer arising out of any claim against the company by the said legal heirs.

No order as to cost. Inform the Central Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 17-12-2003 in reference No. IT/52/2002 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 13th January, 2004.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. Case No. IT/52/2002

Smt. Shalini Kunkolkar,
Oitez, Taleigao,
Tiswadi-Goa. ... Workman/Party I

v/s.

M/s. Mandovi Pearl
Guest House/
/M/s. Mandovi White House,
Behind Tourist Hostel,
Residency,
Panaji-Goa. ... Employer/Party II

Workman/Party I -Represented by Adv. Shri Subhas Naik.

Employer/Party II- Represented by Adv. Shri K. Bhosle.

Dated : 17-12-2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 30-7-2002 referred the following dispute for adjudication of this Tribunal.

1. Whether the action of the management of M/s. Mandovi Pearl Guest House, also known as M/s. Mandovi White House, Panaji in terminating the services of Smt. Shalini Kunkolkar, Attendant/ /Sweeper, with effect from 4-5-1999, is legal and justified?

2. If not, to what relief the workman is entitled?

2. On receipt of the reference a case was registered under No. IT/52/2002 and registered A. D. notice was issued to the parties. In pursuance to the said notice the parties appeared. The Workman/Party-I (for short "workman") filed her statement of claim at Exb.- 3. The facts of the case in brief as pleaded by the workman are that she was employed with the Employer/Party-II (for short "employer") as Attendant/Sweeper since the year 1987 on a salary of Rs. 800/- p.m. That on 4-5-99 the employer terminated her services though she had worked continuously from the year 1987. That at the time of termination of service she was not given one month's notice nor she was paid retrenchment compensation and gratuity. The workman claimed that termination of her service by the employer is in violation of the provisions of Section 25-F of the Industrial

Disputes Act, 1947 and hence the said termination is illegal and unjustified. The workman therefore claimed that she is entitled to reinstatement in service with full back wages and continuity of service.

3. *The employer filed written statement at Exb.-5.*– The employer admitted that the workman was employed as a Sweeper in the Hotel of the employer. The employer stated that since the financial condition and the business of the employer was not sound, it was thought of closing the Hotel and accordingly a notice was sent to the workman and the Hotel was closed from 1-4-99. The employer stated that inspite of the receipt of the said notice the workman kept on attending to the duties and her salary till June, 1999 was paid. The employer stated that ultimately the workman was given a cheque for Rs. 5000/- on 11-11-99 towards full and final settlement but she refused to accept the same. The employer denied that the workman is entitled to any relief as claimed by her. The workman thereafter filed rejoinder at Exb.-6.

4. On the pleadings of the parties issues were framed at Exb.-7 and thereafter the case was fixed for recording the evidence of the workman. However the parties submitted that they are trying to arrive at an amicable settlement and accordingly the case was fixed on 17-11-03 for filing the terms of the settlement by the parties. Accordingly the parties appeared and submitted that the dispute between them is amicably settled and they filed the terms of settlement at Exb.-10. The parties prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement which are duly signed by the parties and I am satisfied that the said terms are certainly in the interest of the workman. I, therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 17-11-03 Exb.-10.

ORDER

1. Both the parties have arrived at a mutually acceptable settlement after mutual discussions.
2. The Party No. II has agreed to pay a sum of Rs. 10,000/- (Rupees ten thousand only) in full and final settlement of all claims of Party No. I in the present reference. Party No. I has agreed to accept the amount in full and final settlement of all his claims in the present reference.
3. Both the parties therefore humbly pray that the consent award be passed on the following terms:

   It is mutually agreed between the parties that the Party No. II shall pay to Party No. I a sum of Rs. 10,000/- in full and final settlement of all his claims in the present reference.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 17-12-2003 in reference No. IT/51/2002 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 13th January, 2004.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. Case No. IT/51/2002

Shri Andrew Borges,
Salvador do Mundo,
House No. 282,
Bardez-Goa. ... Workman/Party -I

v/s.

M/s. Mandovi Pearl
Guest House/Mandovi
White House,
Behind Tourist Hostel
Residency, Panaji. ... Employer/Party II

Workman/Party I -Represented by Shri Subhas Naik.

Employer/Party II- Represented by Adv. Shri K. Bhosle.

Panaji, dated : 17-12-2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 30-7-2002 referred the following dispute for adjudication of this Tribunal.

1. Whether the action of the management of M/s. Mandovi Pearl Guest House, also known as Mandovi White House, Panaji, in terminating the services of Shri Andrew Borges, Manager with effect from 4-5-1999, is legal and justified?
2. If not, what relief the workmen are entitled to?

2. On receipt of the reference a case was registered under No. IT/51/2002 and registered A. D. notice was issued to the parties. In pursuance to the said notice the parties appeared. The Workman/Party-I (for short "workman") filed his statement of claim at Exb.- 3. The facts of the case in brief as pleaded by the wokman are that he was employed with the Employer/Party-II (for

short "employer") as Security in charge from 23-5-1990 on salary of Rs. 2150/- p.m. That on 4-5-99 the employer terminated his services though he had worked continuously from 23-5-90. That at the time of termination of service he was not given one month's notice nor he was paid retrenchment compensation and gratuity. The workman claimed that termination of his service by the employer is in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 and hence the said termination is illegal and unjustified. The workman therefore claimed that he is entitled to reinstatement in service with full back wages and continuity of service.

3. *The employer filed written statement at Exb.-4.*– The employer admitted that the workman was working with the employer since May, 1990. The employer stated that as no tourists were coming to the hotel of the employer and the financial condition of the employer was getting worse, the establishment of the employer was closed after giving proper notice to the workman and he was paid Rs. 10,500/- in instalments by way of settlement. The employer stated that the Party-I is not entitled to any relief as claimed by him. The workman thereafter filed rejoinder at Exb.-5.

4. On the pleadings of the parties issues were framed at Exb.-7 and thereafter the case was fixed for recording the evidence of the workman. However the parties submitted that they are trying to arrive at an amicable settlement and accordingly the case was fixed on 17-11-03 for filing the terms of the settlement by the parties. Accordingly the parties appeared and submitted that the dispute between them is amicably settled and they filed the terms of settlement dated 17-11-03 at Exb.-10. The parties prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement which are duly signed by the parties and I am satisfied that the said terms are certainly in the interest of the workman. I, therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 17-11-03 Exb.-10.

ORDER

1. Both the parties have arrived at a mutually acceptable settlement after mutual discussions.

2. The Party No. II has agreed to pay a sum of Rs. 12,000/- (Rupees twelve thousand only) in full and final settlement of all claims of Party No. I in the present reference. Party No. I has agreed to accept the amount in full and final settlement of all his claims in the present reference.

3. Both the parties therefore humbly pray that the consent award be passed on the following terms:

"It is mutually agreed between the parties that the Party No. II shall pay to Party No. I a sum of Rs. 12,000/- in full and final settlement of all his claims in the present reference."

No order as to cost.

Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. 28/1/2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 19-11-2003 in reference No. IT/15/91 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 13th January, 2004.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/15/91

Shri Premnath Halankar,
Rep. by Gomantak Mazdoor Sangh,
Ponda-Goa. ... Workman/Party I

v/s.

M/s. Goa Steel Rolling Mills Ltd.,
Bicholim-Goa. ... Employer/Party II

Workman/Party I -Represented by Adv. Shri G. Shirodkar.

Employer/Party II- Represented by Adv. Shri A. Nigalye.

Panaji, dated : 19-11-2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 9-4-1991 bearing No. 28-9-91-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. Goa Steel Rolling Mills Ltd., Bicholim, Goa, in terminating the services of Shri Premnath Halankar with effect from 10-8-90, is legal and justified.

If not, to what relief the workmen is entitled to ?"

2. On receipt of the reference a case was registered under No. IT/15/91 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party I (for short,

"Workman") filed his statement of claim at Exb. 5. The facts of the case in brief as pleaded by the workman are that he was employed with the Employer/Party II (for short, "Employer") as a Driver on salary of Rs. 775/- per month. That he was a member of Goa Mazdoor Sangh who had submitted charter of demands to the employer and the dispute on the said demands was referred to the Industrial Tribunal for adjudication. That during the pendency of the said reference the employer charge sheeted him and subsequently enquiry was conducted against him. That after the enquiry was concluded the Inquiry Officer submitted his findings and on receipt of the said findings a show cause notice was issued to him by the employer which was replied to by him. That by order dated 10-8-90 the employer discharged him from service. The workman contended that the enquiry held against him is not fair and proper and that he was not given proper opportunity to defend himself in the enquiry. The workman contended that the order passed by the employer discharging him from service is illegal and injustified and it was in violation of the provisions of Sec. 33 of the Industrial Disputes Act, 1947. The workman therefore claimed that he is entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb. 6. The employer stated that the workman was involved in serious acts of misconduct such as refusing to deliver the goods to the customers, unauthorisedly carrying passengers in the employer's vehicle and collecting fare from them etc., The employer stated that since the workman continued with his illegal acts he was charge sheeted and subsequently a domestic enquiry was held against him and the Inquiry Officer submitted his findings holding him guilty of the charges. The employer stated that on receipt of the findings of the Inquiry Officer a show cause notice was issued to the workman and on receipt of his reply he was discharged from service w.e.f., 10-8-90. The employer stated that the enquiry was conducted against the workman in a fair and proper manner and as per the provisions of the Certified Standing Orders. The employer stated that the workman was given full opportunity to participate in the enquiry and to defend himself but the workman did not participate in the enquiry from 16th June, 1990. The employer stated that the termination of service of the workman is legal and justified and the workman is not entitled to any relief as claimed by him. The workman thereafter filed rejoinder at Exb. 7.

4. On the pleadings of the parties issues were framed at Exb. 8. The issue no. 1 which was relating to the fairness of the enquiry conducted against the workman was treated as preliminary issue and after evidence was led by both the parties, this Tribunal by findings dated 26-9-95 held that the domestic enquiry held against the workman is not fair and proper. Therefore the enquiry was set aside and the parties were directed to lead evidence on the merits of the case. After the findings on the preliminary issue no. 1 was given the case was fixed for recording the evidence of the employer on the merits of the case. Accordingly the employer led evidence by examining one witness. Before the evidence of the employer was completed the parties submitted that they are trying to arrive at an amicable settlement and therefore at the request of the parties the case was fixed for filing the terms of the settlement. Accordingly, on 30-10-2003 the workman as well as the employer submitted that the dispute between them was amicably settled and they filed the terms of settlement dated 30-10-2003 at Exb. 23. The parties prayed that consent award be passed in terms of the settlement dated 30-10-2003. I have gone through the terms of the settlement which are duly signed by the parties and their respective Advocates and I am satisfied that the said terms are certainly in the interest of the workman. I Therefore accept the submission made by the parties and pass the consent award in terms of the settlement dated 30-10-2003-Exb. 23.

ORDER

1. It is agreed by and between the parties that the Employer/Party II shall pay to the Workman/Party I a sum of Rs. 44,640/- (Rupees forty four thousand six hundred and forty only) in full and final settlement of his claim in the above reference No. IT/15/91.

2. The aforesaid sum of Rs. 44,640/- (Rupees forty four thousand six hundred and forty only) shall be paid by the Employer/Party II to the Workman/Party I in six equal monthly instalments beginning from October 2003 and ending in March 2004. Each of the said instalments shall be paid in the manner stated in Clause no. 3 hereinbelow.

3. The Employer/Party II has issued to the Workman/ /Party I today the following crossed post-dated cheques drawn on Deendayal Nagri Pat Saunstha Maryadid, Bicholim Branch:-

	Cheque No.	Date which the cheque bears	Amount
1.	09101	22-10-2003	Rs. 7,440=00
2.	09102	29-11-2003	Rs. 7,440=00
3.	09103	31-12-2003	Rs. 7,440=00
4.	09104	31-01-2004	Rs. 7,440=00
5.	09105	28-02-2004	Rs. 7,440=00
6.	09106	31-03-2004	Rs. 7,440=00

The Workman/Part I admits and acknowledges the receipts of the aforesaid cheques.

4. The parties hereby declare that their dispute in reference no. IT/15/91 and all other disputes are conclusively settled with the signing of this settlement and they have no dispute, claim and /or demand of whatsoever nature against each other.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. 28/1/2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 23-12-2003 in reference No. IT/53/95 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 13th January, 2004.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/53/95

Workmen,
Rep. by Goa Trade & Commercial
Workers Union,
Velho's Building,
Panaji-Goa. .... Workmen/Party I

v/s.

The Conservator of Forest,
Forest Department Wild Life &
Park Division,
Junta House,
Panaji-Goa. ... Employer/Party II

Workmen/Party I -Represented by Adv. Shri Suhas Naik.

Employer/Party II- Represented by Adv. Shri K. Y. Thally.

Panaji, dated : 23-12-2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 7-9-95 bearing No. 28/26/95-LAB referred the following dispute for adjudication of this Tribunal.

"Whether the action of Conservator of Forest, Government of Goa, Panaji-Goa, in terminating the services of the following workmen with effect from 4-4-94 is legal and justified.

1) Shrikant Gopal Gaonkar.
2) Khushali Bombo Voize.
3) Sudhakar Jiju Goankar.
4) Prema Chandrakant Devidas.
5) Gopal Govind Fadte.

If not, to what relief the workmen are entitled ?"

2. On receipt of the reference a case was registered under No. IT/53/95 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workmen/Party I (for short, "Union") filed its statement of claim at Exb. 3. The facts of the case in brief as pleaded by the union are that the workmen namely Shrikant Gopal Gaonka, Khushali Bombo Voize, Sudhakar Jiju Goankar, Prema Chandrakant Devidas, and Gopal Govind Fadte (for short, "Workmen") were employed by the Employer/Party II (for short, "employer") under the Range Forest Officer at Social Forest at Quepem. That the employer refused employment to the workmen in the middle of January, 1994 and therefore a letter dated 2-3-1994 was sent by the Union regarding break in service given to the workmen. That the workmen were working with the employer for more than 5 years and some of them were issued certificates. That though the Dy. Consevator of Forest had agreed to take the workmen back in service the employer failed to do so and recruited new workmen in their place and even did not pay their wages for the month of December 1993 and January 1994. that the workmen continued to report for work at the department till 3-4-94 when they were physically stopped from reporting by the department. The union contended that the action of the employer in refusing employment to the workmen from 4-4-94 is illegal and unjustified. The union claimed that the workmen are entitled to regularisation of service with full back wages and continuity of service.

3. The employer filed written statement at Exb. 4. By way of preliminary objection the employer stated that it is not an "Industry" as defined under the Industrial Disputes Act, 1947 and the workmen are not "Workmen" as defined under the said Act. The employer denied that the workmen are the members of the union i.e., Goa Trade & Commercial Workers Union. The employer stated that the workmen were employed as casual labourers as and when there was work in the plantation/nurseries and they were not issued any letter of appointment. The employer denied that the workmen continued to report for work till 3-4-94 and thereafter they were physically stopped. The employer stated that the workmen were engaged whenever there was work and they were not paid on holidays. The employer stated that the workman Srikant Goankar worked in the plantation/nursery during the period 16-8-91 to 27-12-93 with break; Kushali Bombo Voize worked during the period 10-7-89 to 23-12-93 with break; Sudhakar J. Goankar worked during the period 28-12-92 to 22-12-93 with break; Prema Devidas worked during the period 17-3-90 to 23-12-93 withbreak and Gopal Fadte worked during the period 15-7-91 to 23-12-93 with break. The employer denied that the workmen had worked continuously for 5 years. The employer stated that the certificate given by the Range Forest Officer to Prema Devidas for the period 13-5-90 to 30-9-93 included the period of breaks and unpaid holidays. The employer stated that since the workmen were engaged on daily wages as and when there was work, the question of terminating their services did not arise nor they are entitled to any relief as claimed by them. The Union thereafter filed rejoinder at Exb. 5.

4. On the pleadings of the parties, following issues were framed at Exb. 6.

1. Whether the Party I proves that the workmen named in the reference worked for more than 5 years with the Party II without any break in service ?
2. Whether the Party I proves that the Party II terminated the services of the workmen named in the reference w.e.f. 4-4-1994 which is illegal and unjustified ?
3. Whether the Party II proves that the party II is not an "Industry" and hence reference is not maintainable ?
4. Whether the Party II proves that the workmen named in the reference are not "Workmen" and no industrial dispute exists and therefore, the reference is not maintainable ?
5. What relief ?
6. What Award ?

5. My findings on the issues are as follows:

Issue No. 1: In the negative.

Issue No. 2: In the affirmative as regards termination of service from 4-4-94. In the negative as regards termination of service.

Issue No. 3: In the negative.

Issue No. 4: In the negative.

Issue No. 5: Workmen are not entiled to any relief.

Issue No. 6: As per order below.

REASONS

6. *Issue No. 3:* The employer raised the contention in the written statement that it is not an "industry" as defined under the Industrial Disputes Act, 1947. The burden therefore was on the employer to prove that it is not an "industry". The union as well as the employer have filed written arguments. The employer however has submitted that it is not making any submission on this aspect. The union however has relied upon the judgments of the Supreme Court in the case of Bangalore Water Supply and Severage Board v/s Rajappa reported in 1979 I LLJ 349 and Chief Conservator of Forest v/s Jagannath Maruthi Kondare reported in 1990 II LL 1223. The Union has submitted that the Forest Department was making profits from the activities carried out by it namely growing plants and selling them to the private parties, public Panchayats and other institutions, and therefore it falls within the meaning of Sec. 2(J) of the Industrial Disputes Act, 1947.

7. Sec. 2(J) of the Industrial Disputes Act, 1947 defines "industry" as follows:

Sec. 2(J): "Industry" means any business, trade, undertaking, manufacturing or calling of employees and includes calling of service, employment, handicraft, or industrial occupations or avocation of workman."

The scope of the definition of "industry" was considered by the Supreme Court in its various judgments but the entire case law of this definition was reviewed by the Supreme Court in the case of Bangalore Water Supply and Severage Board (supra). In para. 161 of the Judgement the Supreme Court has held that only the sovereign functions of the Government qualify for exemption from the definition of industry and not the welfare activities or economic activities undertaken by the Government or by the statutory bodies and the absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sectors. In the said para. 161 the Supreme Court has laid down the following Tripple Test to find out whether an establishment or undertaking is an industry or not.

a) Where

i) Systematic activity

ii) Organised by Co-operation between employer and employees (the direct and substantial element is chimerical)

iii) For the production and for distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making on a large scale prasad or food) there is an industry in that enterprises.

8. Therefore whether the Forest Department, Wild Life and Park Division, is an industry or not will have to be found out in terms of the law laid down by the Supreme Court in the above Bangalore Water Supply case. In the said case the Supreme Court has held that only the Sovereign functions of the Government, sticto sensu, do not fall within the definition of industry and not the welfare activities or the economic adventures undertaken by the Government and that the profit motive is irrelevant. In the case of PWD employees Union and others v/s State of Gujrat reported in 1988 I LLJ 524 the Gujrat High Court has held that only the sovereign functions akin to the legislative functions or judicial functions or one akin to the defence of the State or Nation can be pleaded as sovereign functions. In the said case the Gujrat High Court has held that the true test that is evolved by the Supreme Court in Bangalore Water Supply case (supra) and Hospital Mazdoor Sabha case (supra) to determine whether an activity is an industry or not is whether it is a service that State could have left to the private enterprise and if so full filled such a dispute be industrial dispute ? The High Court further held that it is the character of activity which decides the question as to whether the activity in question attracts the provision of Sec. 2(J) of the Industrial Disputes Act, 1947 and not who conducts the activities or whether it is for profit or not. It is therefore to be seen whether the activities which are carried by the employer Forest Department, Wild Life and Park Division are the sovereign functions of the Government.

9. In the present case the union as well as the employer has led evidence. The workman Smt. Prema Devidas alongwith the other workmen used to do the work of planting trees and manuring them and that they used to plant about 2 to 3 lakhs of trees such as cashew trees, teak wood trees, and other types of fruit bearing trees in a year in the social forestry, and that the Forest Department used to sell the said trees and plants to Agricultural Department, Panchayats etc. In her cross examination she stated that in all 13 persons were doing the work of planting trees. She denied the suggestion that she was employed to do the work of watch and ward and not to do the work of planting tree. She also denied the suggestion that she and the other workmen have planted only the cashew trees and not any other trees. From the cross examination of the said witness it can be seen that the employer admitted that the workman Smt. Prema Devidas was employed by the employer. It was not denied that the employer did not plant any trees nor that the employer did not sell the trees and plants to Agricultural Department, Panchayats etc. What is denied is the planting of trees by the workmen in the present reference. The statement of Smt. Prema Devidas is corroborated by the other witness, that is, by the workman Shri Sudhakar Goankar. He has also stated that he alongwith the other workmen was planting trees like cashew trees, teak trees, tamarind trees etc., and the Forest Department, used to sell the said trees to Agricultural Department, Panchayats and to the public. In his cross examination it was only denied that the Forest Department was not selling any trees or plants to the Panchayats or to the public or to the Agriculture Department. The employer's witness Shri Shantaram Rane who was working as Range Forest Officer in the Social Forestry at Quepem however admitted in his deposition that the workmen in the present reference were employed for planting trees during the rainy season and that including the workmen, the employer was also engaging about 50 to 60 labourers who used to do the same work as done by the workmen. He has further admitted in his deposition that the plants which were grown were sometimes sold to private parties and they were given to Agricultural Department and Panchayats free of cost. In his cross examination he stated that the nursery was being developed in the month of December every year and the plants were sold in the month of June. He further stated that the plantation of the traces by the side of the trees is undertaken in the month of June and July. He has also stated that the plants were being sold to the public at the rate of 50 paise per plant. The above evidence therefore establishes that the activities which are carried on by the employer are that of growing plants and trees and selling them to the Agricultural Department, Panchayats and to the public. These activities are carried on by the employer by engaging labour. These activities cannot be said to be the sovereign functions of the Government as they are not akin to legislative functions or judicial functions or akin to the defence of the State. These activities can be carried out by any private institution, or private parties. The union has relied upon the Judgment of the Supreme Court in the case of Jagannath Maruti Kondhare (supra). In this case it was contended on behalf of the Chief Conservator of Forest that the Forest Department cannot be said to be an "industry" because the functions discharged by the said department and more particularly, the scheme undertaken by the department in Pune District is sovereign in nature. The scheme was primarily intended to fulfil bio-aesthetic, recreational, and educational aspirations of the people and the Pune Forest division was also afforestation for soil/moisture conservations under various state level. The Supreme Court held that the scheme undertaken by the Forest Department cannot be regarded as a part of inalienable or inescapable function of the stage as the scheme was intended to fulfil the recreational or educational aspirations of the people and such work would well be undertaken by an agency which is not required to be even as instrumentality of the State. For the same reasons the Supreme Court also held that the Social Forestry work undertaken by the Forest Department in Ahmednagar district is not the sovereign function of the State. The Supreme Court therefore negatived the contention of the Chief Conservator of Forest and held that the Forest Department of the Government is an "industry". The above judgment of the Supreme Court squarely applies to the present case. In the present case also the activities carried on by the employer are primarily the welfare activities undertaken for the benefit of the people. There is a systematic activity organised by co-operation between the employer and its employees for the production and distribution of goods and services to satisfy human wants and wishes. The said activities when subjected to the Triple Tests laid down by the Supreme Court in Bangalore Water Supply case (supra), definitely falls within the meaning of Sec. 2(J) of the Industrial Disputes Act, 1947. The Supreme Court has held that the profit motive is totally irrelevent and the welfare activities undertaken by the Government would also fall within the definition of "industry". In the circumstances, I hold that the employer has failed to prove that it is not an "industry" within the meaning of Sec. 2(J) of the Industrial Disputes Act, 1947. I hold that the Forest Department, Wild Life and Park Division is an "industry". I therefore answer the issue no. 3 in the negative.

10. *Issue No. 4:* The employer has contended that the workmen on whose behalf dispute is raised by the union are not "workman" as defined under the Industrial Disputes Act, 1947, and as such there is no industrial dispute. In the written arguments the employer has submitted that it does not want to make any submissions in this respect. Except for making a statement in the written statement that the workmen are not "workman" and no industrial dispute exists, no specific pleadings have been made by the employer in the written statement in this respect to show why the workmen are not "workman" nor in the evidence of the union it was suggested to the witnesses that they and the other workmen are not "workman". Even the employer's witness Shri Shantaram Rane no where in his evidence

stated that the workmen are not "workman" and that there is no industrial dispute. Infact the burden was on the employer to prove that the workmen are not "workman" and that no industrial dispute exists. However no evidence has been led by the workmen to prove that the workmen are not "workman" nor any submissions have been made by the employer on the above issue. It appears from the evidence of the employer that according to the employer the workmen are not "workman" because they were employed as casual labourers on daily wages and they were not paid on any holidays nor they were given any benefits.

11. Sec. 2(s) of the Industrial Disputes Act, 1947 defines "Workman" as follows:

"Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, where the terms of employment be express or implied and for the purposes of any proceeding under this Act in relation to an industrial dispute, include any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person–

i) who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957; or

ii) who is employed in the police service or as an officer or other employee of a prison, or

iii) who is employed mainly in a managerial or administrative capacity, or

iv) who, being employed in a supervisory capacity draws wages exceeding one thousand six hundred rupees per mensem or exercise, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

12. The Madras High Court in the case of E. Elumalai v/s The Management of Simplex Concrete Tiles (India) Ltd., reported in 1970 Lab. I. C. 1469 has held that Sec. 2(s) of the Industrial Disputes Act, 1947 defines "workman" in widest possible terms including apprentices and that Sect. 2-C when it uses the expression "workman" (other than Badli workman or a casual workman) clearly shows that a casual workman is included in the definition of workman in Sec. 2(s) of the Act. Therefore, the authority of the Madras High Court relied upon by the employer lays down that a casual worker also falls within the definition of "workman". In the case of Tapan Kumar Jana v/s Calcutta Telephone & Others reported in 1988 II LLJ 383 the Calcutta High Court has held that a casual worker employed in an industry for hire or reward will be a "workman". The Calcutta High Court relying upon the judgement of the Supreme Court in the case of Digwadih Colliery v/s. Their workmen reported in 1965 II LLJ 118 wherein it was held that the termination of the services of a badli workman amounted to retrenchment within the meaning of Sec. 2 (00) of the Act and that of the Madras High Court in the case of P. Joseph v/s Management of Gopal Textiles Mills reported in 1975 I LLJ 136, wherein it was observed that the definition of "workman" does not exclude even the casual employee or a substitute like "badli" in para 15 of its Judgment held as follows:

"The definition has not provided for the exclusion of a casual labourer from the category of a workman nor has it laid down that only the permanent employees of an industry will be workman. Certain employees have been excluded from the definition of "workman" but such exceptions also do not include a casual labourer. The primary condition that has to be fulfilled by an employee to bring him within the definition of "workman" is that he must be employed in an industry for hire or reward. The concept of permanent employment is not the only criteria of the definition of the term "workman". Any person or employee who satisfies the primary conditions as stated above and who does not come within the exceptions contained in the definition will be a workman. If a casual labourer is employed in an industry for hire or reward, he will be a "workman" within the meaning of sec. 2(s) of the Act. There is nothing in the definition of term "workman" which excludes a casual labourer".

13. The employer's witness Shri Shantaram Rane who was working as the Range Forest Officer with the employer has admitted that the workmen Shrikant Goankar, Khushali Voize, Sudhakar Goankar, Prema Devidas and Gopal Phadte were employed by the employer whenever there was work and that they were working in the Social Forestry at Quepem, as labourers. He has stated that they were employed for planting trees during the rainy season and also for protecting plants. He has further stated that they were employed on daily wages on the rates fixed by the Government and they were paid wages at the end of the month as per the number of days worked by them. Daily wages is only a mode of payment of wages. In his cross examination he admitted that the workmen were doing the work of planting the trees, watering them, manuering the fields of the nursery belonging to the Social Forestry at Quepem. He has also stated that the Guard used to maintain the muster roll and the wages were paid according to the attendance marked on the muster roll. The above evidence therefore shows that the workmen were employed by the employer on wages and they were doing the work which is of unskilled and manual nature. They do not fall within the exceptions contained in the definition of workman. Therefore the workmen fall within the meaning of "workman" as defined under Sec. 2(s) of the Industrial Disputes Act, 1947. Since the workmen are "workman" and it has been already held by me that the employer is an "industry", the industrial dispute exists. I therefore hold that the employer has failed to prove that the workmen named in the reference are not "workman" and that no industrial dispute exists. I therefore answer the issue no. 4 in the negative.

14. *Issue No. 1:* The union has examined two witnesses namely the workman Smt. Prema Devidas and the workman Shri Sudhakar Gaonkar. The employer has examined one witness namely Shri Shantaram Rane who was working as Range Forest Officer at Social Forestry, Quepem, during the period 1989 to 1993. He has admitted that the workmen Shrikant Goankar, Khushali Voize, Sudhakar Goankar, Prema Devidas and Gopal Phadte were employed on daily wages and they were working in the Social Forestry at Quepem as labourers. Admittedly no appointment letters were issued to the workmen. The workman Prema Devidas has stated that she was employed from 13th January, 1990 and the workman Sudhakar Goankar has stated that he was employed from 20-6-92. No evidence has been produced by the said workman to prove that they were employed from the date mentioned above. However, they have produced the certificates at Exb. W-1 and W-5 respectively issued to them by the Range Forest Officer. The certificate Exb. W-1 states that Smt. Prema Devidas was working from 13th May, 1990 to 30th September, 1993 and the certificate Exb. W-5 states that Shri Sudhakar Goankar was working from 28-12-92 to 30-9-93. These certificates were never challenged by the said workmen. The workmen never objected that the date from which they worked has not been correctly mentioned in the certificates. Therefore in the absence of any contrary evidence the date mentioned in the certificate is liable to be accepted. Similarly there is no evidence regarding the date of employment of the other workmen. Smt. Prema Devidas and Shri Sudhakar Goankar have stated that they are not aware of the date of joining of the other workmen. The other workmen namely Shrikant Goankar, Khushali Voize and Gopal Phadte have not been examined. The employer in its written statement has given the dates of employment of the workmen. In the absence of any other evidence the said dates of employment are liable to be accepted. As far as the workman Smt. Prema Devidas and Shri Sudhakar Goankar are concerned their dates tally with the dates mentioned in the certificates Exb. W-1 and Exb. W-5. In the written statement the employer has stated that the workmen Shrikant Goankar worked from 16-8-91 to 27-12-93; Khushali Voize from 16-7-89 to 22-12-93; Sudhakar Goankar from 28-12-92 to 22-12-93; Prema Devidas from 17-3-90 to 23-12-93 and Gopal Fadte from 15-7-91 to 23-12-93. It is the contention of the union that the workmen were refused employment from 4-4-94. The employer's witness Shri Rane has stated that the muster roll was maintained by the Guard and that the wages were paid as per the attendance marked on the muster roll. He has further stated that the guard used to send the weekly muster roll to them. He has however not produced the muster roll on the ground that he is presently working in the Head Office at Margao. Since the muster roll was in possession of the employer, it could have been produced by the employer through some other relevant witness. However, the employer did not do so. In fact though Shri Rane was presently working at Margao nothing prevented the employer from producing the muster roll through the said witness. Muster roll was a relevant document as it would have shown till which period the workmen had worked. In the absence of the evidence from the employer the statement of the workmen that they were refused employment from 4-4-94 is liable to be believed and accepted. I would also like to point out a suggestion was put to the workman Prema Devidas on behalf of the employer in her cross examination that their wages from January, 1994 till March, 1994 were paid. This itself shows that the workmen had worked till March, 1994. It is pertinent to note that the employer's witness Shri Rane in his evidence did not state from which date the services of the workmen were terminated. He stated that the decision to terminate the services of the workmen was taken by him and their services were terminated by the Range Forest Officer who succeeded him. There is no evidence from the employer as to from which date the services of the workmen were terminated. In the circumstances the statement of the workmen that their services were terminated from 4-4-94 is liable to be accepted. If the date of termination of service of the workmen is taken as 4-4-94, still as per the date of employment given by the employer that Shrikant Goankar worked from 16-8-81, Khushali Voize from 16-7-89, Sudhakar Goankar from 28-12-92, Prema Devidas from 17-3-90 and Gopal Fadte from 15-7-91, and even if it is presumed that the workmen worked continuously without any break in service, the period of employment of the workmen does not come to more thnt 5 years. Besides the letters dated 2-3-94 Exb. W-2 colly and 4-4-94 Exb. W-3 of the union show that the workmen and the other labourers who were being engaged on daily wages were being given break in service and this issue was taken up by the union with the Dy. Conservator of Forest. I therefore hold that the union has failed to prove the workmen worked for more than 5 years with the employer without any break in service. Hence, I answer the issue No. 1 in the negative.

15. *Issue No. 2 and 5:* While deciding the issue No. 1 it has been held by me that the employer has failed to produce the muster roll which according to the employer's witness Shri Rane was being maintained by the Guard. This muster roll have shown the period till which the workmen worked. It has been held by me that in the absence of any evidence from the employer and in view of the suggestion put to the workman Smt. Prema Devidas in her cross examination that the wages of the workmen till March, 1994 were paid, the contention of the workmen that their services were terminated from 4-4-94 is liable to be believed and accepted. The question now is whether the said termination is illegal. The union has contended that the termination is illegal because the workmen had worked for more than 240 days and therefore the employer had to comply with the provisions of Sec. 25F of the Industrial Disputes Act, 1947 at the time of termination of their service. In my view there is no substance in this contention of the union. The union itself has produced an order Exb. W-6 dated 9-5-1989 issued by the Secretary (Finance). There is a rubber stamp of the Dy. Conservator of Forest, Social Forestry Division which shows that the

said order was received by them on 17-5-89. The said order is marked to all the Heads of the Department/ /Officer. As per this order a ban was imposed on the employment of the daily wage workers with effect from 1-5-1989. The said order further stated that in case there are compelling and unavoidable circumstances on account of which it becomes imperative for any department to recruit people on daily wages, prior approval of the Government should invariably be taken in such cases. The said order was shown to the employer's witness Shri Rane in his cross examination and suggestion was put to him that as per the said order the Finance Department has imposed a ban on employment of daily wage workers with effect from 1-5-1989, and this suggestion was admitted by him. Thus according to the union itself the Government had imposed ban on employment of daily wage workers from 1-5-1989. All the workmen were employed after 1-5-89. Therefore their employment is illegal being in contravention of the order dated 9-5-1989 Exb. W-6 of the Government. There is no evidence that the employer had obtained prior approval of the Government before employing the workmen on daily wages. The Kerala High Court in the case of Ernalloor Service Co-operative Bank Ltd., v/s Labour Court reported in 1986 II LLJ 492 has held that the person who claims benefit of Sec. 25F must be the one who is validly appointed in service by the employer. In the present case the workmen could not have been employed on daily wages in view of the order dated 9-5-1989 Exb. 6 of the Finance Secretary of the Government of Goa. Therefore the employment of the workmen was not valid. As such even presuming that the workmen had completed 240 days of service they could not claim the benefit of Sec. 25F of the Industrial Disputes Act, 1947. In the case of Keval Bana Gopal Mali and Ors. V/s Dhule Municipal Council reported in 1998 II CLR 842, the appointment orders of the 173 employees was cancelled by the Chief Officer of the Municipal Council on the ground that their appointments were illegal. The Bombay High Court held that the President of the Council had no power and authority to issue appointment orders without following the recruitment rules and selection process and since their appointments were illegal the so-called employees had no right of employment and they could not be reinstated and continued in employment. In the present case also since the employment of the workmen was illegal they have no right of employment and they are not entitled to reinstatement and continuation in service. In the circumstances the termination of the service of the workmen cannot be said to be illegal and unjustified, and they are not entitled to any relief. I therefore hold that services of the workmen were terminated from 4-4-94 but the union has failed to prove that the termination of service of the workmen is illegal and unjustified. I further hold that the workmen are not entitled to any relief. In the circumstances I answer the issue Nos. 2 and 5 accordingly.

Hence I pass the following order.

ORDER

It is hereby held that the action of the Conservator of Forest, Government of Goa, Panaji-Goa., in terminating the services of the workmen Shrikant Gopal Goankar, Khusali Bombo Voize, Sudhakar Jiju Goankar, Prema Chandrakant Devidas and Gopal Govind Fadte w.e.f. 4-4-94 is legal and justified. It is hereby further held that the said workmen are not entitled to any relief.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

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